

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

NATHANIEL L. ADDERLY,	:	
	:	
Plaintiff,	:	
	:	No. 3:CV-07-666
-vs-	:	
	:	(Judge Kosik)
	:	
OFFICER RODDY, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM

____Before the court are the plaintiff's motion for default judgment and motion for judgment on pleadings. For the reasons which follow, the plaintiff's motions will be denied.

Background

Following an extensive procedural history in this case¹, plaintiff was permitted to proceed on a First Amendment retaliation claim against Sgt. Taylor and on Eighth Amendment conditions of confinement claims against Lt. Holtz, Officer Roddy and Officer Yonker. The United States Marshal was directed to serve a copy of the "partial amended complaint" (Doc. 11) on the four remaining defendants. On September 13, 2007, plaintiff filed a motion for default judgment and a supporting brief. Defendants filed a brief in opposition to the motion on October 25, 2007. On February

¹The procedural history in this case is set forth in this court's Memoranda and Orders of June 21, 2007 (Doc. 14) and August 7, 2007 (Doc. 17).

4,2008, plaintiff filed a motion for judgment on the pleadings and a brief in support thereof. Defendants filed a brief in opposition to the motion on February 22, 2008. Plaintiff filed a reply brief on March 3, 2008.

Discussion

As indicated above, the United States Marshal was directed to serve plaintiff's partial amended complaint on defendants Taylor, Holtz, Yonker and Roddy on June 21, 2007. On that date, a summons was issued and provided to the United States Marshal for service on the defendants. Plaintiff filed his motion for default judgment on September 13, 2007. On October 24, 2007, a Notice of Appearance was entered by defendants' counsel along with a motion for extension of time to file an answer. This court entered an order on October 26, 2007 directing defendants to file an answer to plaintiff's partial amended complaint within thirty days. On November 19, 2007, the waiver of service was returned by plaintiff indicating that the waivers were sent by each of the defendants on June 27, 2007 and that the answers were due on August 27, 2007. On November 21, 2007, defendants filed a second motion for extension of time to file an answer. An order was filed on November 30, 2007 allowing defendants thirty days in which to file an answer. Defendants' answer with affirmative defenses was filed on December 10, 2007.

A review of the record shows that while the waivers of service were sent on June 27, 2007, and defendants did not timely file an answer to the complaint, the plaintiff was not prejudiced by the

delay. The defendants argue that the failure to timely answer was the result of an inadvertent clerical mistake, and that they have a meritorious defense to the plaintiff's claims. Moreover, this court granted the defendants' requests for extension of time to file the answer. Because we find that the plaintiff was not prejudiced by the defendants' late filing of an answer, the motion for default judgment will be denied.

Plaintiff also filed a motion for judgment on the pleadings. Because we find there are outstanding issues to be resolved, we will deny plaintiff's motion for judgment on the pleadings. We note that in December of 2007, defendants sought and obtained permission to take the deposition of plaintiff. Because discovery has been ongoing for several months, we will direct that all discovery be completed by the parties within sixty (60) days, and that any dispositive motions be filed within thirty(30) days from the close of discovery.

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	:	
Defendants.	:	

ORDER

NOW, THIS 8th DAY OF AUGUST, 2008, IT IS HEREBY ORDERED THAT:

(1) The plaintiff's motion for default judgment (Doc. 19) is **DENIED**;

(2) The plaintiff's motion for judgment on the pleadings (Doc. 35) is **DENIED**; and,

(3) All discovery in this case shall be completed by the parties within sixty (60) days from the date of this order; and any dispositive motions shall be filed within thirty (30) days from the close of discovery.

s/Edwin M. Kosik
United States District Judge